IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1532

PETER CARBONE,

Petitioner,

—v.—

STATE OF CONNECTICUT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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Petitioner Peter Carbone prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Connecticut announced January 18, 1977.

Opinions Below

The opinions of the Supreme Court of Connecticut are reported at Vols. XXXVI, No. 37 CONN. L.J. 5 (1975) and XXXVIII, No. 29 CONN. L.J. 8 (1977). They are reproduced in full in the appendix of the petition of James Carbone (28a, 57a).* James Carbone was tried with peti-
76-1444.
tioner and his petition is a companion to this one. No.

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* References in this petition to the numbered pages of an appendix in all instances refer to the appendix to the petition of James Carbone (a). That appendix is adopted by this petitioner.

Jurisdiction

The Judgment of the Supreme Court of Connecticut was entered on January 18, 1977. A timely motion for reargument was denied on February 1, 1977, the effective date of judgment. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Questions Presented

1. Did a search for business records, supposedly justified by "consent", violate the defendant's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, when that "consent" was mere acquiescence to a request by a search party of eight persons who had already been conducting an exhaustive search of the premises for more than an hour based upon a warrant obtained solely upon facts eight months stale?

2. Did the court below deny to petitioner his right of confrontation guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States when it refused to allow defendant to demonstrate bias and interest on the part of the principal prosecution witnesses by showing the sham invocation of their Fifth Amendment privilege against self-incrimination? Did the state court improperly sacrifice petitioner's Sixth Amendment rights in favor of the witnesses' Fifth Amendment privilege?

3. Did the conviction of petitioner on each of four duplicitous counts (the State being allowed to proceed on each count with both of the, mutually exclusive, offenses of larceny and receiving stolen goods) violate his rights under the Sixth Amendment to be properly informed of the nature of the charges against him, when his repeated

requests to have the State define the true nature of the charges, or choose between the theories of prosecution were just as consistently rejected?

Constitutional and Statutory Provisions Involved

U.S. Constitution, Amend. IV, V, VI and XIV.

§53-63a Conn. Gen. Stat. (1958 Rev.)
§53-65 Conn. Gen. Stat. (1958 Rev.)

Statement

The Facts Material to the Federal Questions

Petitioner, and his brother James Carbone were charged, tried and convicted upon substituted informations each setting forth four counts of larceny allegedly committed on distinct dates in January and February, 1971 (28a, 51a).

In May of 1971, management at Carpenter Technology Corporation discovered an apparent large inventory shortage of copper and nickel at its plant in Bridgeport, Connecticut. On July 14, 1971, Albert Edwards and Russell Scofield, both employees of Carpenter, were apprehended in the act of stealing nickel from the plant (44a).

By early August, both Edwards and Scofield were "cooperating" with the Bridgeport police and with persons connected with Carpenter and its insurance carrier. At that time, each of the thieves gave statements to Detective Cafferty of the Bridgeport Police Department claiming that on four different dates in January and February of 1971, they had stolen from Carpenter quantities of nickel, iron and copper and had sold and delivered the metals to peti-

tioner and his brother at Fairfield Scrap Iron and Metal Company owned by petitioner.

On September 2, 1971, approximately seven months after the alleged thefts, Detective Cafferty and Robert Magee, an employee of Carpenter, obtained a state search and seizure warrant authorizing a search of Fairfield Scrap for the alleged stolen metals and two chains and a tarpaulin used in handling the metals, none of which items were found on the premises (7a, 32a, 54a). No authority to search for or seize books and records was sought or obtained.

The application for, and affidavit in support of, the search warrant was based solely upon Cafferty's representations to the Court that Edwards and Scofield had been arrested in the course of an attempted theft in July and that each of the thieves had sworn to him that they had made four deliveries of copper and nickel to Fairfield Scrap back in January and February (1a-3a).

At trial, the State's case rested almost entirely upon the testimony and credibility of the two thieves. The State made much, however, of a receipt taken from the Fairfield Scrap records bearing the name "John Parks" which Scofield claimed he had signed at the time of making one of the alleged deliveries of stolen metal. The search for and seizure of that slip forms the basis of the Fourth Amendment claim here.

Upon obtaining the warrant, Detective Cafferty and Magee returned to Carpenter where they began to amass a large search party. Cafferty also invited Henry Popowski, Foreman of the Melt Shop at Carpenter to help identify

questioned items. Alfred Constantino, a special investigator for Carpenter's insurance carrier was brought along for no apparent reason. Another Bridgeport policeman, two Fairfield officers and an F.B.I. agent rounded out the party. It was that formidable group which descended en masse, in four vehicles, on Fairfield Scrap about 2:00 P.M. on September 2, 1971 (30a, 52a-54a).

All of the persons in the search party, both police officers and civilians, were dressed in civilian clothes (30a, 53a). When the search party arrived at Fairfield Scrap, Sergeant Targowski, the senior Fairfield Police Officer, sought out someone in charge and not finding James Carbone, the proprietor, he displayed the warrant to petitioner Peter Carbone and advised him of their purpose on the premises (31a, 53a). All eight of the search party, including the civilians, fanned out around the premises for purposes of the search (32a, 54a). The officers in charge, Cafferty and Targowski, were both aware of the fact that the warrant did not authorize a search for any books and papers of Fairfield Scrap (33a, 55a). On the way to the premises before the search, Detective Cafferty had a conversation with the insurance investigator, Constantino, concerning a search for slips and records with the thieves' names on them, and Cafferty told him not to search for anything, but if they happened to see anything with those names on it, to let him know (30a, 53a).

Shortly after the search began, James Carbone arrived, as did his son and employee, Frank Carbone. After the search party had been on the premises for an hour or so, Constantino asked Frank, in James' presence, if it would be alright to search through their sales receipts (32a, 54a). Before that time Detective Cafferty had given both James

and Peter Carbone their "Miranda" warnings, but at no time had he ever warned them that they need not allow any search for items not named in the warrant, nor did he specifically tell anyone just what was in the warrant (31a-33a, 54a-55a). Petitioner never took the warrant and read it, and there was no indication that anyone read any portion of the warrant to him (31a, 53a). Although Detective Cafferty took no part in the Constantino-Carbone conversation, he was present and within earshot when the request was made of Frank Carbone (32a, 54a). Detective Cafferty remained silent even though he knew a very possible result of Constantino's question was that a search would take place; Detective Cafferty did not tell any of the Carbones who Constantino was prior to the request for sales receipts and records (32a, 54a).

Frank Carbone got the receipts in response to Constantino's request; the two civilians, Constantino and Popowski, looked through them, and Popowski found the "John Parks" slip (32a-33a, 54a). Petitioner made no objection to Frank getting the sales receipts (32a, 54a). Prior to that search, neither Popowski nor Constantino had had any conversation with the Carbones nor had they informed them that they were civilians and not any "official" part of the search party. Neither Constantino nor Popowski had ever asked any permission to come on the premises (32a, 54a). The Carbones were not asked to sign a consent to search form, although the Bridgeport police have such forms, nor were they ever advised by anyone that the seizure of the slip was beyond the scope of the warrant (33a, 55a). When they left three and a half hours later, the search party had found nothing named in the warrant, but had taken the "John Parks" receipt which was later admitted at trial (34a).

Petitioner and his brother each maintained his innocence and both testified to that effect at the trial, which involved deeply disputed issues of fact. As noted by the court below, the State's case "hinged in the main part upon the credibility of the witnesses Scofield and Edwards" (34a).

During the cross-examination of the two thieves, petitioner and the co-defendant sought to show that both Scofield and Edwards had, in earlier depositions in a civil action arising out of the same alleged facts, pleaded a Fifth Amendment privilege to avoid giving any information or testimony to the defendants in the criminal action (10a). Long prior to the time of those depositions, each of them had given to the police lengthy sworn statements which had hopelessly incriminated them (10a-11a). Scofield, in fact, had already pleaded guilty and was waiting sentence on charges arising out of the subject matter of his proposed deposition testimony (11a). At all times, it was clearly Edwards' intention also to plead guilty and testify against petitioner and his brother. The inquiry into what defendants felt was a sham invocation of the privilege was offered on the issue of the credibility of the two thieves, to show interest in the prosecution and bias against the defendants (12a). The trial court sustained the prosecution objection to such offers, and both defendants excepted (12a).

The jury returned verdicts of "guilty as charged" on each of the four counts (29a); both defendants were sentenced to terms of incarceration of not less than three years and not more than nine years in the State's prison.

The Raising Of The Federal Questions

Both defendants raised the Fourth Amendment issues in a pre-trial Motion To Suppress Evidence. It was petitioner's claim that the warrant had been issued without probable cause, based upon facts which were far too stale to establish such cause. There was an evidentiary hearing on the issue of consent. The motion was denied, at the pre-trial stage, by Honorable Irving Levine of the Connecticut Superior Court. At trial the presiding judge overruled petitioners' objections to the "John Parks" slip, without further independent consideration, relying upon Judge Levine's earlier ruling on the constitutional question.

On the first appeal to the Connecticut Supreme Court, that court vacated the convictions on the search issue, holding that, as the civilians were on the premises at the behest and under the direction of the police, their search through the Fairfield Scrap records was subject to Fourth Amendment standards. Concerning the warrant, the Court held that, based upon the affidavit, it was "unable to find that there is a substantial basis for the issuing judge's conclusion that probable cause presently existed" and that there "clearly was merit to the claim that the warrant was stale". (39a, 40a) The case was returned for a reassessment of the consent issue in light of the illegal warrant. Noting that "it is obvious that this error [on the consent issue] was prejudicial to the defendants", the court found it totally unnecessary even to consider the non-search assignments of error.

Upon remand, with absolutely no new evidence having been heard, the lower court found that the warrant was *not* stale, and stood by its earlier finding that there had been free and voluntary consent to the search. The second

time back to the Connecticut Supreme Court, *this time subsequent* to this Court's decision in *Stone v. Powell*, 428 U.S. 465 (1976), that court had no difficulty finding that the warrant was sufficiently "fresh" and that there had been effective consent.

The attempt to confront Scofield and Edwards concerning their invocation of the Fifth Amendment privilege was raised, as set forth above, in the course of cross examination of those witnesses. Upon objection by the State, petitioner offered to prove the alleged bad faith assertion of the privilege as bearing upon the credibility of those two crucial witnesses. Proper exception was taken to the court's sustaining of that objection. In denying petitioners' claims of prejudice thereby, the Connecticut Supreme Court held that "[t]he prior invocation of a constitutional privilege can be motivated by so many factors other than bias that the court was within its discretion in excluding cross-examination on this matter as irrelevant." (68a)

The duplicity issue, and the failure to apprise the petitioner of the specific charges he was to defend, was raised in many ways. In his Motion for Bill of Particulars petitioner asked the court to make the State specify whether it was accusing him of being a principal thief or receiver of stolen goods. That request was denied. (8a) After the State rested, defendants moved to dismiss each count of the information as duplicitous: denied. (12a) A companion motion filed at the same time asking for the alternative relief of making the State then elect, for each count, whether to proceed either on a straight larceny, or receiving, theory was also denied. (13a)

After all the evidence was in, petitioner requested that the court submit only one theory to the jury rather than

both. (14a) The trial judge refused to charge the jurors that way, instead instructing them that they could convict on *either* theory for each count, but that they could not have two guilty verdicts within any single count. (15a) Counsel excepted to that charge. (27a) The Connecticut Supreme Court dealt with the matter by affirming simply *because the various motions were made,* observing that "experienced counsel" therefore was obviously aware of the fact that, indeed, within each count the State "was charging *both* and would endeavor to prove *either.*" One can only speculate what the reaction of the court below might have been if defendants had *not* complained that they had not been afforded proper notice of the charges against them.

REASONS FOR GRANTING THE WRIT

1. The Court below ignored established Fourth Amendment principles of this Court on the issues of staleness of the warrant and the alleged consent for the search. This Court, having made federal habeas corpus relief unavailable in *Stone v. Powell,* should exercise care so that state courts do not ignore the constitutional imperative set forth in the Fourth Amendment.

2. This Court has never decided whether an accused's Sixth Amendment right to confront and cross-examine a witness against him must bow to the witness' Fifth Amendment privilege. The resolution of that issue by the court below, adversely to petitioner, flies in the face of applicable principles enunciated by this court in *Davis v. Alaska,* 415 U.S. 308 (1974) and other cases.

3. This court has never decided that a prosecution based upon duplicitous charges, not truly informing a defendant

of the nature of the charges against him, is not violative of the Sixth Amendment; the maintenance of this prosecution by means of duplicitous counts, over repeated objections and in the face of continual attempts by petitioner to become informed of the nature of the charges against him, violates established principles of this Court concerning fundamental fairness.

THE SEARCH

We humbly submit to this Court that the case at bar presents a very important question—in many ways much broader than the specific Fourth Amendment "staleness" and "consent" issues raised. In 1975, the Supreme Court of Connecticut, in weighing whether the affidavit of September 2, 1971 presented sufficient facts under oath to justify a search of defendants' premises on that date, stated that,

> "[t]he unsupported observation by Detective Cafferty that the items are 'reported to be on [sic] the current custody and care of the premises' is insufficient to establish continuity, and, thus, we are unable to find that there is substantial basis for the issuing judge's conclusion that probable cause presently existed." (39a)

The court's narrow holding concerning the sufficiency of the affidavit was that there "clearly was merit to the claim that the warrant was stale" and added that the stale warrant and resultant lack of legal presence at Fairfield Scrap should have been considered on the question of alleged consent to the search. (40a)

In 1975, the court below did not stop with finding the warrant stale. It passed on to speak to "the ultimate de-

termination whether, upon all the circumstances, the consent herein can be deemed to have been voluntarily given." (42a) In commenting on that "ultimate determination" the court significantly cited the language of this Court that

> "[t]he Fourth . . . . . Amendment require[s] that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, *no matter how subtly the coercion were applied,* the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed." (Emphasis Added)
>
> *Schneckloth vs. Bustamonte,* 412 U.S. 218, 228 (1974) (42a)

The 1975 reversal of the conviction on the search issue was an emphatic one, the court declining even to bother with the non-search issues "since it is obvious from the record that this error [on the Motion to Suppress Evidence] was prejudicial to the defendants . . . " (42a) Immediately before announcing its reversal, the Connecticut Court again searched out some very interesting language from *Schneckloth.*

> "[I]f under all the circumstances it has appeared that consent was not given voluntarily—that it was coerced by threats or force, *or granted only in submission to a claim of lawful authority*—then we have found the consent invalid and the search unreasonable." (Emphasis Added) Id. at 233 (42a)

By 1977, all had changed. By then, on exactly the same affidavit—the exact same "evidence"—the court below held that, indeed, probable cause *had existed* for issuance of

the warrant. (59a) Notwithstanding its earlier 1975 citations to the "subtle coercion" obviously inherent in the fact that a search party of eight persons were spending hours searching premises for which they had announced legal authority in the from of a warrant or to its 1975 reference to "consent . . . granted only in submission to a claim of lawful authority"—in 1977, somehow, "the determination . . . that consent was voluntary was reasonable considering all the evidence together with the reasonable inferences which could be drawn from it." (60a)

Between 1975 and 1977, there was no new evidence offered, or heard, on the issue of consent. However, it may be of some importance that, in 1976, this Court, in *Stone vs. Powell, supra,* closed the door of the United States District Court for the District of Connecticut to this petitioner and his brother. We ask that, in view of the now-closed door, and the extraordinary about-face of the court below, this Court examine most carefully the validity of the holding below.

In its finding of probable cause, the trial court engaged in the grossest kind of speculation that a tarpaulin and a couple of chains allegedly wrapped around some stolen metal, claimed to have been delivered to the Fairfield Scrap premises, would be at those premises seven months later. There was not a shred of evidence in the affidavit, or before the court in any other form, supporting the finding that the chains and tarp "were of such a nature that use of them could be made in the premises"—or supporting its conclusion that "they would have remained there inasmuch as it would be natural to keep them where there was *constant need for them.*" (Emphasis Added) (46a) There was no evidence presented to the issuing or re-

viewing courts that Fairfield Scrap had *any* need for those items, or that the thieves had ever stated that it was anyone's alleged intention ever to remove the handling materials from the stolen metals.

Although the trial court attempted weakly to invoke what it called a "continuous course of criminal conduct" to justify a finding of probable cause, the claimed offenses simply do not fall into that category. This case did not involve an everyday "business" like gambling, prostitution, or narcotics—only four alleged discrete larcenies seven and eight months before the search. The fact that Scofield and Edwards were caught in an attempted theft seven weeks before the search, relied upon also by Judge Levine, adds nothing, as there was nothing in the affidavit to the effect that the thieves intended to deliver that material to the defendants. Such an "omission" was of course not inadvertent on the part of the State; neither Scofield nor Edwards, at trial, ever claimed to have seen defendants or to have been at the Fairfield Scrap premises after February although, they testified, they continued to steal metal for "delivery" to others.

Absolutely nothing in the affidavit submitted, from whence must come the probable cause, *Aguilar vs. Texas*, 378 U.S. 108, 112 (1964), supports the conclusions of the courts below. Those conclusions can only be reached by resort to the kind of rank conjecture and speculation that this Court has specifically forbidden. *Sgro vs. United States*, 278 U.S. 206, 211 (1932)

Even if we were to assume that the warrant were validly issued, and the police party legally on the premises that day, to search for metals, chains and tarpaulin, the search through the business records and seizure of the slip was

nevertheless illegal. The finding by the trial court, affirmed by the Connecticut Supreme Court, of "free and voluntary" consent simply cannot stand.

We must examine the situation as seen by the Carbones that September afternoon in 1971. A large party of officers and unidentified auxiliaries had arrived, in possession of a warrant and announcing their intention to search the premises, which was accomplished over a three and one half or four hour period. They fanned out in all directions and virtually took control of the premises. Although Peter and James Carbone were warned of their "rights" as to the Miranda warnings, not a thing was explained to them concerning the scope of search authorized by the warrant, and of their right to say "no" to any attempted expansion of that search. While the trial court correctly pointed out that *Schneckloth* does not automatically void consent given without a warning or explanation of the right to resist, the failure to give such a warning is a factor which must be considered. That factor, in this case, is crucial because the officers *did display* a warrant, clearly implying their right to search and the duty upon the Carbones to submit to that authority. Under such circumstances, almost any permission granted without an understanding that the warrant did *not* authorize a search for the slips would be "acquiescence" rather than voluntary consent.

Finally, we submit that there is no way to find true consent here in the face of the decision of this Court in *Bumper v. North Carolina*, 391 U.S. 543 (1968), where the Court voided a supposed "consent search" on facts practically indistinguishable from those presented here.

> "When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden

> of proving that the consent was, in fact, freely and voluntarily given. This burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. A search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid. The result can be no different when it turns out that the State does not even attempt to rely upon the validity of the warrant or fails to show that there was, in fact, any warrant at all.
>
> When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent."
>
> 391 U.S. at 548-550

The court below distinguished *Bumper* on the ground that, in that case, there had been a simple announcement of a warrant, whereas in the case at bar "the warrant was read to Peter and shown to James." (59a, 60a) Since Peter was not even present when the "move was made" for the records, what was read to him was totally irrelevant on the issue of consent, and there is not a bit of evidence that James either read the four page warrant or understood the extremely technical limitations concerning what the search party could not search for. The further reliance by the court below on the fact that Constantino knew he could not search through records without consent, (60a), is patently absurd. The issue is not whether Cafferty's "helper" knew he had to obtain consent by hook or crook—the question is whether James Carbone's "consent" was truly voluntary, or merely the normal and expected acqui-

escence to the overpowering and continuing police presence, based upon a claim of authority, the warrant.

The trial court attempted to distinguish *Bumper* as a case only applicable to "elderly widows" and not to "adult businessmen." There is, however, absolutely no indication in the above cited language of this Court, or in the opinion generally, which supports such a drastic limitation. Further, there is no indication that businessmen as a group are any better versed or more knowledgeable about the intricacies of search and seizure law. Finally, there is not a shred of evidence that any of the Carbones either had had past experience with the police or with search parties, or that they had been whiling away their leisure hours reading search and seizure literature or taking courses on the Fourth Amendment. The situation here was just as "instinct with coercion" as in *Bumper*. There was no true consent. The search violated established Fourth Amendment principles.

As this court recognized in *Mapp v. Ohio,* 367 U.S. 643 (1961), not all states had felt that the Fourth Amendment protections justified the invocation of the exclusionary rule. Connecticut was among those jurisdictions which had left enforcement of the Fourth Amendment to civil actions and the like. *State v. Carol,* 120 Conn. 573 (1935) It is a historical fact that not all state tribunals have been uniformly scrupulous in recognizing and vindicating those protections and guaranties set forth in the Bill of Rights to the Constitution of the United States. *Palko v. Connecticut,* 302 U.S. 319 (1937); *Cantwell v. Connecticut,* 310 U.S. 296 (1939); *Rogers v. Richmond,* 365 U.S. 534 (1961); *Culombe v. Connecticut,* 367 U.S. 568 (1961); *Malloy v. Hogan,* 378 U.S. 1 (1964); *Griswold v. Connecticut,* 381 U.S. 479 (1965); *Darwin v. Connecticut,* 391 U.S. 346

(1968); *Boddie v. Connecticut*, 401 U.S. 371 (1971). With the tremendous volume of work annually presented to this Court, we realize it is difficult for the Court to accept more than a tiny fraction of the "garden variety" search and seizure cases tendered, especially where, as here, a case virtually identical on its facts has already been decided at this level. *Bumper v. North Carolina, supra.* Since, however, (1) the Court has closed the door to habeas corpus relief, (2) the decision below rather clearly ignores principles established by this Court and (3) the case was hotly disputed on the facts, resulting in substantial incarceration for two individuals with no prior criminal involvement of any kind, we suggest to the Court that the exercise of its certiorari jurisdiction here is fully warranted.

Confrontation

The two thieves were the principal state's witnesses; without them, simply, the State had no case. Within three weeks of their arrest in mid-July each had given full statements to the authorities. Both witnesses acted after fully consulting with counsel, and the statements were given voluntarily with the desire of cooperating fully. Later, both Scofield and Edwards gave further statements as part of further preparation of the prosecution against the Carbones. At all times, they intended to tell the police and court as much as they wanted to know; Scofield stated it was *always* his intention to plead guilty, cooperate with the police and testify against the defendants. Indeed, he had in fact *already* pleaded guilty by the time he was subpoenaed to testify at the civil deposition. (11a).

During cross-examination of Scofield and Edwards, the defense proffered questions calculated to bring out the

fact that each had pleaded the Fifth Amendment privilege in response to all questions asked in the course of depositions taken in the civil action brought by Carpenter Steel against the Carbones, Scofield and Edwards. (10a, 68a)

Defendants claimed that the witnesses' invocation of the privilege, long after they had decided to cooperate with the police and plead guilty, was in bad faith. The defense argued that it showed a desire to "help" the prosecution and to prevent the defendants from learning, in advance, what their testimony would be at trial. It was offered to show an interest on the part of both Scofield and Edwards in the outcome of the criminal trial, and to show bias against the defendants. If such inferences were not overpowering ones, they were at least permissible, intelligent conclusions that the jury might have drawn, and used in weighing the credibility of Scofield and Edwards. The inability of defendants to explore the credibility of the two crucial State's witnesses effectively denied them their Sixth Amendment right to confront witnesses against them.

The only case relied on by the Court below to support its denial of petitioner's right to cross-examine the State's witnesses is *Grunewald v. United States,* 353 U.S. 391 (1957). But *Grunewald,* held it prejudicial error to allow the Government to cross-examine the defendant about his prior invocation of the privilege before the grand jury since the assertion of the privilege was consistent with the defendant's innocence and such cross-examination would be highly prejudicial to the defendant. *Grunewald* barred cross-examination to insure fairness to the defendant and, therefore, is wholly inapposite. Moreover the witnesses in the pending case had admitted their guilt and could not have been prejudiced by the questioning.

An individual under compulsion to make disclosure as a witness who revealed information instead of claiming the privilege has been held to lose the benefit of the privilege. *United States v. Kodel,* 397 U.S. 1, 7-10 (1970). More recently, in *Garner v. United States,* — U.S. —, 47 L.Ed.2d 366 (1976), this Court held that a taxpayer's incriminating disclosures on his tax returns instead of claiming the privilege, as he had a right to do, could subsequently be used against him in a federal criminal prosecution.

This Court, moreover, has consistently disallowed refusals to testify when there is no "real" and substantial "hazard of incrimination," see *Marchetti v. United States,* 390 U.S. 39, 48, 53 (1968), and has held that a witness who volunteered incriminating answers to the grand jury could not thereafter invoke the privilege as to details which "would not further incriminate." *Rogers v. United States,* 340 U.S. 367, 373 (1950). See also *Ellis v. United States,* 416 F.2d 791, 800 (D.C. Cir. 1969)

A primary interest secured by the confrontation clause is the right of cross-examination which traditionally has allowed the cross-examiner "to impeach, i.e. discredit, the witness." *Davis v. Alaska,* 415 U.S. 308 (1974). In *Davis* this Court held:

> "The State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness." 415 U.S. at 320.

Prior case law lends no support for a claim that the witnesses' Fifth Amendment rights should have been superior to the defendants' right to "effective cross-examination for

bias of an adverse witness." Id. To the contrary, it has been held that the fact of invocation of the privilege may be admissible even without the added factor, here present, of these defendants' Sixth Amendment rights.

In *Raffel v. United States,* 271 U.S. 494 (1926), the defendant had, in an earlier trial on the same indictment, relied upon his privilege and had not taken the stand. In the second trial, he did testify. The government sought, successfully at trial, to bring out the fact that at the first trial the defendant had not testified. On appeal, this Court held that such cross-examination was proper. The Court stated that once having taken the stand, he had irrevocably waived any privilege; the earlier assertion of the privilege, if in any way logically relevant and competent within the scope of the rules of cross-examination, was admissible to test his credibility. The Court, very broadly, indicated in the very last sentence of the opinion, "We can discern nothing in the policy of the law against self-incrimination which would require the extension of immunity to any trial or to any tribunal other than that which the defendant reserves it by refusing to testify." 271 U.S. 494 at 499.

The Supreme Court of Michigan, some years later, in *People* v. *McCrea,* 303 Mich. 213, 6 N.W. 2d. 489 (1942), reached the same result. There, McCrea had refused to testify before the Grand Jury that had indicted him, and the State, in cross-examination of his trial testimony, was allowed to bring out that fact. If such cross-examination is permissible where it could be so highly prejudicial *to the defendant himself,* surely it is admissible where, as here, it is not an accused being examined.

Petitioner seeks review by this Court to resolve the tension between his right of confrontation under the Sixth

Amendment and the privilege against self-incrimination of the Fifth Amendment invoked by the State's chief witnesses in prior proceedings. Petitioner submits that, under the circumstances of this case, his right to cross-examine the witnesses against him in order to impeach their credibility as guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States should have prevailed.

NOTICE OF THE CHARGES

The reasons why this Court should issue the writ on this issue have been fully and persuasively set forth by the petitioner in the companion case, *James Carbone v. State of Connecticut,* Docket No. 76-1444, at pages 10 through 16 of his Petition. This petitioner respectfully adopts the reasons therein set forth and hereby incorporates that portion of said Petition herein.

CONCLUSION

For the reasons set forth above, this Court should issue its writ of certiorari to review the judgment of the court below. We respectfully ask the Court to do so.

Respectfully submitted,

By .....

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Attorneys for Petitioner

May 2, 1977

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1532

PETER CARBONE,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent

MOTION IN OPPOSITION TO THE PETITION FOR GRANT OF CERTIORARI

Joseph T. Gormley, Jr.
Chief State's Attorney
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New Haven, Connecticut 06525

Robert E. Beach, Jr.
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I. STATEMENT OF THE CASE

The procedures by which this case has progressed through the state courts has been stated in the petitioners' briefs and need not be repeated here. The state does, however, feel it may be helpful to stress some of the facts relied upon by the Connecticut courts in the determinations of the three issues sought to be considered by this court. References, where necessary, will be made to the appendix affixed to petitioner James Carbone's brief.

The first issue concerns the admissibility of a piece of paper which was obtained in the course of a search of the Carbones' business premises. The facts as found by the trial court and relied upon by the Connecticut Supreme Court appear in that court's second opinion, (52-60a), and need not be repeated at length here. Suffice it to say that on September 2, 1971, the Bridgeport Police Department obtained a warrant to search the premises of Fairfield Scrap, a business enterprise owned by petitioner James Carbone and which employed James' brother Peter and son Frank. (52a, 53a). The warrant was premised on information provided by Albert Edwards and Russell Scofield, two employees of the Carpenter Technology Corporation of Bridgeport, Connecticut, who had admitted stealing precious metals from their employer and delivering them to Fairfield Scrap. (52a, 55a). The thefts had occurred on four different dates between January 8, 1971, and February 20, 1971. (54a, 55a). The items expressly mentioned in the warrant were three kinds of metal, a "braided cable chain with [a] bull ring and L hooks for lifting inserts," a heavy link chain with an oval bull ring, and a certain tarpaulin canvas. (58a). Books and papers were not mentioned.

The party which executed the search warrant consisted of a Bridgeport police detective, two employees of Carpenter, who presumably could identify items stolen from Carpenter, one Alfred Constantino, an insurance investigator, a photographer from the Bridgeport Police Department, two members of the Fairfield, Connecticut Police Department, and an F.B.I. agent. (52a-53a).

Cafferty had been informed by the thieves that the name "John Parks" had been used on a receipt slip for one of the deliveries of stolen items. (52a). On the way to the premises of Fairfield Scrap, Cafferty informed Constantino that he couldn't search for sales slips unless voluntary consent was obtained. (56a).

On arrival at Fairfield Scrap, one of the Fairfield policemen found Peter Carbone and read to him from the warrant the items listed therein. (53a). James Carbone arrived shortly thereafter, the warrant was shown to him, and he was informed that questions should be addressed to Cafferty. (53a). Peter and James Carbone were given *Miranda* warnings. (54a).

Abount an hour after the search began, Constantino, the insurance investigator, asked Frank Carbone if he could look at the sales slips. Frank relayed the request to James, who said, "Well, I see no reason why he shouldn't see them. Fine, let him have them." (56a). Constantino and another went through the receipts and found the "John Parks" slip. (56a). Frank and James assisted in making a photostatic copy of the slip and signed a receipt for it. (56a). The slip was subsequently the subject of a motion to suppress, which was denied, and was admitted into evidence at the trial.

The Connecticut courts held that the warrant was not de-

fective because of staleness and that the consent to search for the slips was valid. (57a). The items useful in handling metal, the two chains and the tarpaulin, were thought to be innocuous in themselves and it was held to be reasonably probable that they, at least, would be on the premises. (58a-59a). The consent was held valid, as the consenters were adult businessmen who had been given their rights and who not only voluntarily gave permission for the search but to some extent assisted in it. (60a). No sort of coercion or deviousness has been found. The facts actually found and relied on by the Connecticut courts hardly support the Kafkaesque reign of terror presented by the petitioners.

A second issue concerns alleged duplicity in the information. The substituted information (App. to this brief pp. 1a-4a) consisted of four detailed counts, one for each delivery of items stolen from Carpenter. In each count, the items were described in detail. With respect to the first two counts, the petitioner's conduct was described as "being present when the stolen property was unloaded . . . [and] by arranging for and being present when the payments for the material were made." (App. to this brief pp. 1a-2a). As to the third count, the state alleged that the petitioner was present at the delivery, spoke with Scofield and Edwards, and arranged for the payment. (App. to this brief p. 3a). In the fourth count, the state alleged that the petitioner arranged for the larceny, was present at the delivery, and participated in the payment. (App. to this brief pp. 3a-4a).

Additionally, the state filed three bills of particulars. (App. to this brief pp. 4a-8a). From an examination of the information and the bills of particulars, it is obvious that the state

claimed that the petitioner was both an accessory to the actual larceny, in that he arranged for the thefts, and a receiver of stolen goods. There was no ambiguity in the factual pattern alleged. The legal analysis will appear in the argument section of this brief.

The third claim is that the petitioner's Sixth Amendment right of confrontation was violated by a limitation of the cross-examinatinon of Scofield and Edwards. Prior to the criminal trial of the petitioner, Carpenter had instituted a civil action against the Carbones, Scofield and Edwards. (68a). In the course of this proceeding, both Scofield and Edwards were deposed; each at that time invoked his privilege against self-incrimination on the advice of his attorney. (10a-12a). Prior to the depositions, each had given detailed statements to the police, again on the advice of attorneys, and Scofield had pleaded guilty to two charges, (10a-12a), but had not yet been sentenced. At the time he invoked the privilege, Edwards did not know whether or not he would testify for the state. (11a). Each stressed that the privileges had been invoked on the advice of his attorney. (11a-12a).

The petitioner's position was that he should have been allowed to cross-examine Scofield and Edwards on the issue of the invocation of the Fifth Amendment; the essential claim was that because they had been willing to give information to the police but not to the petitioner, bias against the petitioner was demonstrated; and that evidence of the bias should have been before the jury. (12a). He also claimed that the privilege had been invoked in bad faith because it had been waived by virtue of the statements given to the police; the invocations, then, supposedly constituted further evidence of bias and prejudice against the petitioner. (12a).

Significantly, there was no invocation of the privilege at the criminal trial of the petitioner and no claim has been made that any prior statements were not available for purposes of cross-examination. The petitioner was undoubtedly aware of the witnesses' cooperation with the police, of their statements which incriminated the Carbones, and of the pendency of criminal cases against them. The trial court excluded the offer of proof concerning the invocation on grounds of relevancy, and the Connecticut Supreme Court upheld the exclusion. (68a-69a).

II. *REASONS FOR DENYING CERTIORARI*

A. THE "JOHN PARKS" SLIP WAS PROPERLY ADMITTED, AS IT HAD BEEN OBTAINED IN FULL COMPLIANCE WITH THE FOURTH AMENDMENT.

The petitioner's claim with respect to the admissibility of the John Parks slip is essentially two-fold: the warrant is claimed to have been stale and the consent to look through the receipts is claimed to have been involuntary. It is the state's position that both claims involve factual rather than legal disputes and that the Connecticut courts have applied the appropriate standards to the facts found.

The staleness issue was determined with reference to the landmark case in the area, *Sgro v. United States,* 287 U.S. 206 (1932). The Connecticut courts fully recognized that the question whether there is probable cause to believe that the items to be searched for are on the premises at the time the warrant is issued is one of constitutional dimension. (58a). With respect to the staleness issue, it has been recognized by this court that the circumstances of each case determine whether probable cause exists. *Sgro. v. United States*, supra, 210-11. Citing a

recent case, *United States v. Steeves,* 525 F.2d 33, 38 (8th Cir. 1975), the Supreme Court of Connecticut determined that the trial court had not abused its discretion in finding that the innocuous articles were, within a reasonable probability, likely to be on the premises. (58a-59a). Because, as noted above, there was a factual basis for the conclusion and because the state courts have applied the tests prescribed by this and other federal courts, there would seem to be no reason for this court to review the issue.

The petitioner has commented on an "about-face" by the Connecticut Supreme Court on the staleness issue. While the propriety of issuing a substitute opinion doesn't appear to be a matter of concern to this court, it is obvious that the two opinions are easily reconcilable. The first opinion held, essentially, that the staleness issue had not been properly considered and remanded the case for further proceedings. (42a). The trial court then considered the staleness issue and wrote a thorough memorandum stating the facts found and the law applied; the conclusion was that the warrant was not stale. (43a et seq.). On the second appeal to the Connecticut Supreme Court, that court held that, having now considered all the attendant circumstances, the trial court had not erred. (58a-59a). It is the petitioner's characterization of the proceedings, rather than the proceedings themselves, which are unusual.

The related issue is whether the consent to the search was voluntary. As noted above, receipt slips were not mentioned in the warrant; rather, in the course of the search permission was sought and granted to look through the receipts. The petitioner's claim is that the consent was not voluntary but rather was mere acquiescence to a claim of lawful authority. See

Bumper v. North Carolina, 391 U.S. 543 (1968).

This issue was considered exhaustively by both the trial court and the Supreme Court. *Bumper* was distinguished for factual reasons stated above; various factors such as the reading and showing of total willingness to the point of cooperation by the Carbones, the giving of *Miranda* rights, and the fact that the Carbones were adult businessmen were considered. (60a). Applying the standards of *Schneckloth v. Bustamonte,* 413 U.S. 218, 227 (1974), the state courts concluded that the state had met its burden to show voluntary consent by the totality of he circumstances. With respect to the Fourth Amendment issue, then, the state submits that no new or unusual principles of law were applied; rather, the constitutional standards enunciated by this court were strictly followed. The factual version urged by the petitioners was not accepted by the state courts, but there appears to be almost no dispute as to the applicable law.

B. *THE INFORMATION WAS NOT HARMFULLY DUPLICITOUS.*

As noted above, the information in combination with the bills of particulars alleged larceny violations both as principal and as receiver; only §53-63a of the Connecticut General Statutes was alleged to have been violated. The court denied defense motions to dismiss and to force the state to elect to proceed under one theory or the other. The Connecticut Supreme Court stated, in essence, that the state should have expressly indicated that it would attempt to prove both, but that the state had implicitly indicated this intention and that defense counsel undoubtedly understood the situation and was not misled. (65a-66a).

The reason why the state preceeded as it did lies in the statutory and case law applicable at the time of trial. Section 53-63a of the Connecticut General Statutes (79a) was the general larceny statute and §53-65 provided that a receiver of stolen goods "shall be prosecuted and punished as a principal . . ." (79a). Under the case law, neither offense was considered to be a lesser included offense of the other. But, under the case law, one could be charged under §53-63a and be convicted as a receiver, because receiving was considered to be one way generally to commit larceny and because the language of §53-65 expressly provided for prosecution as a principal. Any ambiguity could be resolved by a bill of particulars. But one charged only with a violation of §53-65 could not be convicted on proof that he was a principal. *State v. Huot*, 170 Conn. 463 (1976); *State v. Palkimas*, 153 Conn. 555 (1966). To protect itself, then, the state charged only a violation of §53-63a, but, through a detailed information and several bills of particulars, apprised the petitioner that he was accused of being both an accessory, and thus liable under the principal statute, and a receiver. The petitioner was quite clearly given adequate notice of the crimes of which he was accused; and, under Connecticut law, principles of double jeopardy foreclosed subsequent prosecution under either theory. See *State v. Cofone*, 164 Conn. 162, 167-68 (1972).

The decision of the Connecticut Supreme Court is in conformity wtih decisions of this court. *Russell v. United States*, 369 U.S. 749 (1962), held, generally, that an indictment must particularly charge a crime. An information and bill of particulars, of course, serve the same purpose as an indictment: each must apprise the accused of what he must be prepared to meet and must be sufficiently accurate for double jeopardy purposes.

Russell v. United States, supra at 369 U.S. 763-64. The vice in *Russell* was that the claimed offense was not stated with sufficient particularity and, because the charging instrument was an indictment, the omission could not be cured by a bill of particulars. In the present case, as noted above, the information and bill of particulars were minutely detailed.

Further, in the instant case, the court clearly charged the jury that it could return one of three verdicts on each count: larceny (as an accessory), receiving, or not guilty. (24a-26a). Any contention that the petitioner does not know of what crime he is convicted, and thereby is subject to the unfairness and uncertainty in *Russell v. United States,* supra, and *United States v. Starks,* 515 F.2d 112, 116-18 (3d Cir. 1975), must fall. The Connecticut Supreme Court's determination that there was no duplicity harmful to the petitioner is in full compliance with decisions of this court.

C. THE COURT'S EXCLUSION OF EVIDENCE THAT SCOFIELD AND EDWARDS HAD TAKEN THE FIFTH AMENDMENT IS CONSISTENT WITH DECISIONS OF THIS COURT.

The facts underlying the final reason urged for granting certiorari were presented above. The petitioner in his brief argues that the privilege was improperly invoked, as the witnesses had waived the privilege. But whether the invocation was proper is not an issue in this case; here, the only issue is whether the trial court abused its discretion in excluding evidence to the effect that the witness had in a prior civil proceeding invoked the Fifth Amendment.

The Connecticut Supreme Court relied on *Grunewald v. United States*, 353 U.S. 391 (1957) in upholding the trial court. (68a-69a). *Grunewald* recognized (at 353 U.S. 421-24) that many factors may motivate the invocation, and, in view of the disfavor in which many people hold the Fifth Amendment, undue prejudice may well outweight the minimal relevance of the evidence.

Here, as in *Grunewald*, it is difficult to imagine how evidence that the witnesses had "taken" the Fifth Amendment would affect their credibility. The privilege was invoked on the advice of attorneys; they both were still subject to criminal sanctions. The invocation was surely not inconsistent with their trial testimony.

There also is no inconsistency between the Connecticut Supreme Court's ruling and this court's opinion in *Davis v. Alaska*, 415 U.S. 308 (1974). In *Davis*, a witness was in effect allowed to lie with impunity because of a state policy prohibiting disclosure of juvenile records. Here, the witnesses' credibility was subject to attack from many avenues, including their own involvement and their own criminal cases. It is patently speculative whether the invocation in any event evinced bias, as it may well have been motivated by other valid considerations, and the evidence may well have been prejudicial. *Davis* concerns denial of cross-examination rather than reasonable limitation.

III. *CONCLUSION*

The state respectfully requests that certiorari be denied.

THE STATE OF CONNECTICUT

BY .....

JOSEPH T. GORMLEY, JR.
CHIEF STATE'S ATTORNEY
DRAWER H, AMITY STATION
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BY .....

ROBERT E. BEACH, JR.
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CERTIFICATE OF SERVICE

This is to certify that three (3) copies of the within and foregoing Motion in Opposition to the Petition for Grant of Certiorari have been mailed to Jacob D. Zeldes, Esquire, 333 State Street, P.O. Box 1740, Bridgeport, Connecticut 06601 this 25th day of May, 1977.

.....

JOSEPH T. GORMLEY, JR., ESQ.

.....

ROBERT E. BEACH, JR., ESQ.

CERTIFICATION OF SERVICE

This is to certify that three (3) copies of the within and foregoing Motion in Opposition to the Petition for Grant of Certiorari have been mailed to Ira B. Grudberg, Esquire, 300 Orange Street, New Haven, Connecticut 06503, this 25th day of May, 1977.

.....

JOSEPH T. GORMLEY, JR., ESQ.

.....

ROBERT E. BEACH, JR., ESQ.

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No. 20735.

Substituted Information

Joseph T. Gormley, Jr., State's Attorney for Fairfield County, accuses Peter Carbone then of Trumbull of the crime of

First Count

Larceny and charges that on or about the 8th day of January, 1971 at Fairfield in said County, the said Peter Carbone did commit larceny on the personal property of Carpenter Technology Corporation, Inc. valued in excess of Two Thousand ($2,000) Dollars in violation of Sec. 53-63 a of the Connecticut General Stautes. Said larceny is more particularly describe as follows; 2 copper inserts with an approximate total weight of 8000 pounds with a value of forty-nine (49) cents per pound were taken from Carpenter Technology between 6:30 P.M. January 8, 1971 and 9:11 A.M. on January 9, 1971 by two employees of Carpenter Technology and delivered to the Fairfield Scrap Iron and Metal Company, 158 State Street Ext. in Fairfield. The value of the 2 copper inserts was approximately Three Thousand Nine Hundred Twenty ($3,920.) Dollars. The defendant's participation consisted in general of conversations and arrangements to buy the stolen merchandise prior to the thefts, by indicating the types of materials to be taken, by arranging for the amount to be paid for the stolen merchandise and by being present at or during the time of delivery.

Second Count

And Said State's Attorney Further Charges That on or about the 24th day of January, 1971 at Fairfield in said County, the said Peter Carbone did commit larceny of the personal property

of Carpenter Technology Corporation, Inc. valued in excess of Two Thousand ($2,000.) Dollars in violation of Section 53-63a of the Connecticut General Statutes. Said larceny is more particularly described as follows, 5 copper inserts with a total weight of a least Ten Thousand pounds with a value of Forty-nine (49) cents per pound were taken from Carpenter Technology between 7:10 A.M. January 23, 1971 and sometime on January 25, 1971 by two employees of Carpenter Technology and delivered to Fairfield Scrap Iron and Metal Company, 158 State Street Ext., Fairfield. The value of the 5 copper inserts was approximately Four Thousand Nine Hundred ($4,900) Dollars. The defendant's conduct consisted generally of conversations and arrangements to buy the stolen merchandise prior to the theft, by helping to unload the stolen merchandise, by arranging for the amounts to be paid for the stolen merchandise, and by being present during the delivery of the stolen merchandise.

And Said State's Attorney Further Charges that on or about the 11th day of February, 1971, at Fairfield in said County the said Peter Carbone did commit larceny of the personal property of Carpenter Technology Corporation, Inc. valued in excess of Two Thousand ($2000) Dollars in violation of Sec. 53-63a of the Connecticut General Statutes. Said larceny is more particularly described as follows: 3 pallets of Hanna Nickel weighing approximately Four Thousand (4,000) pounds each with a value of approximately Sixty-six (66) cents per pound and one pallet of INCO Nickel Cathodes weighing approximately four thousand pounds with an approximate value of $1.34 per pound were taken from Carpenter Technology between 1:25 P.M. February 10 and 7:29 A.M. on February 11 by two em-

ployees of Carpenter Steel and delivered to Fairfield Scrap Iron and Metal Company, 158 State Street Ext. in Fairfield. The approximate value of the Hanna nickel was Seven Thousand NineHundred Twenty ($7,920) Dollars and the INCO Nickel Cathodes, Five Thousand Three Hundred Seventy-Six ($5,376) Dollars. The defendnat's conduct consisted generally of conversations and arrangements to buy the stolen merchandise prior to the theft, by helping to unload the stolen merchandise, by arranging for the amounts to be paid for the stolen merchandise, and by being present during the delivery of the stolen merchandise.

Fourth Count

And Said State's Attorney Further Charges that on or about the 20th day of February, 1971 at Fairfield in said County the said Peter Carbone did commit larceny of the personal property of Carpenter Technology Corporation, Inc. valued in excess of Two Thousand ($2,000) Dollars in violation of Sec. 53-63a of the Connecticut General Statutes. Said larceny is more particularly described as follows: 12 pallets of INCO Nickel Cathodes weighing approximately 4000 pounds each with a value of approximately $1.34 per pound were taken from Carpenter Technology, Inc. between 5:00 P.M. on February 19, 1971 and sometime on February 20, 1971 by two employees of Carpenter Technology and delivered to Fairfield Scrap Iron and Metal Company, 158 State Street Ext., Fairfield. The approximate value of the INCO Nickel Cathodes was $64,304. The defendant's conduct consisted generally of conversations and arrangements to buy the stolen merchandise prior to the theft, by helping to unload the stolen merchandise, by arranging for

the amounts to be paid for the stolen merchandise, and by being present during the delivery of the stolen merchandise.

Dated at Bridgeport, Connecticut, this 18th day of May, 1972.

JOSEPH T. GORMLEY, JR.,
State's Attorney in and for Fairfield County.

Filed May 18, 1972.

No. 20735.

In Reply to Motion for Bill of Particulars

2., 3., 4. & 5. The defendant Peter Carbone advised Russell Scofield and Albert Edwards which metals should be taken from Carpenter Technology, helped unload the materials taken from Carpenter Technology at his business at Fairfield Scrap Iron & Metal Co., and participated with his brother James in making payments to Russell Scofield and Albert Edwards for the stolen merchandise. The materials were also stolen from Carpenter Technology and delivered at Fairfield Scrap Iron & Metal Co., 158 State Street Extension on dates between January 8, 1971 and February 20, 1971. Approximately four deliveries were made during this period on or about January 8, January 24, February 11 and February 20, 1971.

6.	Seven copper inserts (.49 per pound)	$10,976.00
	Hanna Nickel 3 pallets at 4000 pounds at .66 per pound	7,920.00

Electrolyte Nickel Cathodes 13 pallets at 4000 pounds per pallet at $1.34 per pound	69,680.00
	$88,576.00

This represents the approximate total value of property taken and the value thereof during the period January 8, 1971 through February 20, 1971.

The copper inserts were taken in January, the Hanna Nickel and one pallet of Inco Nickel on or about February 11, 1971 and 12 pallets of Inco Nickel on or about February 20, 1971.

STATE OF CONNECTICUT,
By JOSEPH T. GORMLEY, JR.,
State's Attorney.

Filed November 18, 1971.

Supplemental Bill of Particulars

2a. On more than one occasion prior to the first theft at Carpenter Technology on January 8, 1971 the defendant, Peter Carbone, while on the property of Carpenter Technology, advised Edwards and Scofield what metals were of what value and which metals should be taken. The exact times and dates of these occurrences are unknown, but did occur shortly before January 8, 1971.

STATE OF CONNECTICUT,
By JOSEPH T. GORMLEY, JR.,
State's Attorney,

Filed December 23, 1971.

No. 20,735

STATE OF CONNECTICUT,	)	Superior Court,
vs.	)	Fairfield County,
PETER CARBONE.	)	May 17, 1972.

Amended Bill of Particulars

1. The Supplemental Bill of Particulars dated December 22, 1971 is amended by deleting the words, "while on the property of Carpenter Technology."

2. Paragraphs 6 and 7 of the Reply to Motion for Bil of Particulars dated April 19, 1972 as to the First Count is amended to read: January 8, 1971, 2 copper inserts approximately $3,920.00 and as to the Second Count: January 24, 1971, 5 copper inserts approximately $4,900.00.

STATE OF CONNECTICUT,
By JOSEPH T. GORMLEY, JR.,
State's Attorney.

Filed May 17, 1972.